

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
Chikamasa YAMASHITA et al.	)	Group Art Unit: 1616
	)	
Application No.: 10/538,837	)	Examiner: James Henry Alstrum
	)	Acevedo
Filed: June 13, 2005	)	
	)	
For: NOVEL DRY POWDER	)	Confirmation No.: 5653
INHALATION SYSTEM FOR	)	
TRANSPULMONARY	)	
ADMINISTRATION	)	

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**TERMINAL DISCLAIMER**

Assignee, Otsuka Pharmaceutical Co., Ltd., duly organized under the laws of Japan and having its principal place of business at 9, Kandatsukasa-cho 2-chome, Chiyoda-ku, Tokyo 101-8535, represents that it is the assignee of the entire right, title, and interest in and to the above-identified application, Application No. 10/538,837, filed June 13, 2005 for Novel Dry Powder Inhalation System For Transpulmonary Administration in the names of Chikamasa YAMASHITA, Akitsuna AKAGI, and Yuichiro FUKUNAGA, as indicated by assignment duly recorded in the United States Patent and Trademark Office at Reel 017380, Frame 0736 on June 13, 2005. Assignee, Otsuka Pharmaceutical Co., Ltd., further represents that it is the assignee of the entire right, title, and interest in and to U.S. Patent No. 7,448,379, as indicated by assignment duly

recorded in the United States Patent and Trademark Office at Reel 013006, Frame 0711 on June 14, 2002.

To obviate a double patenting rejection, Assignee hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior patent No. 7,448,379. Assignee hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patent are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, Assignee does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 and 173 of the prior patent, as presently shortened by any terminal disclaimer, in the event that the prior patent later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or in part, is terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated before the expiration of its full statutory term as presently shortened by any terminal disclaimer.

In accordance with the fee schedule in 37 C.F.R. § 1.20(d), the required fee of \$140.00 is being filed with this disclaimer.

If a check for the required fee is not filed concurrently herewith or if there are any additional fees due in connection with the filing of this Terminal Disclaimer, please charge the fees to Deposit Account 06-0916. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such an extension is requested and the fee should also be charged to Deposit Account 06-0916

The undersigned is an attorney of record.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 22, 2009

By: Charles E. Van Horn  
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